

Attorney Docket: 1860/50907
PATENTIN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicants: INGO WAGNER ET AL

Serial No.: 10/089,519

Confirmation No.: 9270

Filed: March 29, 2002

Title: **DYNAMIC MIXER**DECLARATION OF DONALD D. EVENSON**Box PCT**Commissioner for Patents
Washington, D.C. 20231

Sir:

The Undersigned attorney hereby declares that attached herewith is a true copy of the Specification, Application Data Sheet and Declaration as filed on March 29, 2002.

I declare that the preceding statements which are made of my own knowledge are true and that the preceding statements which are made on information and belief are believed to be true. I am aware that willful and false statements and the like are punishable by fine or imprisonment or both under Section 1001 of Title 18 of the United States Code and may jeopardize the validity of the application or any patent issuing thereon.

Respectfully submitted,

September 8, 2002



Donald D. Evenson
Registration No. 26,160

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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicants: INGO WAGNER ET AL

Serial No.: 10/089,519 Confirmation No.: 9270

Filed: March 29, 2002

Title: **DYNAMIC MIXER**

Response to Decision on Petition Under 37 C.F.R. 1.181

Box PCT
Commissioner for Patents
Washington, D.C. 20231

Sir:

In response to the Decision on Petition dated July 8, 2002 (copy enclosed), Applicants resubmit an entire copy of the German and English specification, application data sheet, and Declaration as originally filed on March 29, 2002. Also enclosed is a legible copy of the date-stamped post card dated March 29, 2002, evidencing that the executed Declaration and Power of Attorney was submitted with the original filing of this application. As described in our Response filing of September 24, 2002, the initials "RRD" and the handwritten date of "3-29-02" located in the upper right of the postcard, are used for internal evidence in our office that the original filing has been reviewed by an attorney and that all items listed on the postcard have been included in that filing before leaving our office.

In the Decision on Petition, the previous submission was dismissed on the basis that it was not clear that the copy of the original filed Declaration was a true

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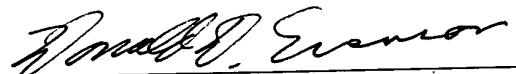
copy. It was assumed that the prior paper made it clear that it was a true copy. Nevertheless, submitted herewith is the undersigned Attorney's Declaration merely stating that in fact it is a true copy of the Declaration as filed on March 29, 2002.

With submission of the items above and the provided explanation, the undersigned respectfully requests that this Notification be withdrawn. If there are any questions regarding this response or the application in general, a telephone call to the undersigned would be appreciated since this should expedite the prosecution of the application for all concerned.

If necessary to effect a timely response, this paper should be considered as a petition for an Extension of Time sufficient to effect a timely response, and please charge any deficiency in fees or credit any overpayments to Deposit Account No. 05-1323 (Docket #1860/50907)

Respectfully submitted,

September 8, 2002



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In re Application of
Wagner et al.
Application No.: 10/089,519
PCT No.: PCT/EP00/09447
Int. Filing Date: 27 September 2000
Priority Date: 01 October 1999
Attorney's Docket No.: 1860/50907
For: DYNAMIC MIXER

: DECISION

: *Reconsideration
due 9/18/03*

This decision is in response to applicant's "Response to Decision on Petition under 37 C.F.R. 1.181" filed on 24 September 2002.

BACKGROUND

On 27 September 2000, applicant filed international application PCT/EP00/09447 that claimed priority of an earlier German application filed 01 October 1999. A copy of the international application was communicated to the United States Patent and Trademark Office from the International Bureau on 12 April 2001. A Demand for international preliminary examination, in which the United States was elected, was timely filed. Accordingly, the thirty-month period for paying the basic national fee for the national stage in the United States expired at midnight on 01 April 2002.

On 29 March 2002, applicant filed a Transmittal Letter (Form PTO-1390) for entry into the national stage in the United States which was accompanied by, *inter alia*, a translation of the international application and the basic national fee of \$890 as required by 35 U.S.C. 371(c). These papers were assigned application number 10/089,519.

On 27 June 2002, the United States Patent and Trademark Office (USPTO) in its capacity as an Elected Office mailed out a "NOTIFICATION OF MISSING REQUIREMENTS UNDER 35 U.S.C. 371" (Form PCT/DO/EO/905) indicating that an oath or declaration in compliance with 37 CFR 1.497(a)-(b) and the surcharge for providing the oath or declaration later than thirty months from the priority date were required. The Notice set a two month extendable time period for response.

On 09 July 2002, applicant submitted a response which was accompanied by, *inter alia*, a date-stamped postcard receipt, a copy of an application data sheet and a copy of the declaration of the inventors.

On 12 August 2002, the USPTO sent applicant a decision indicating that the postcard receipt submitted by applicant was of such poor quality that a substantial portion was unreadable, and that applicant would need to explain the initials and the date on the postcard. The decision also indicated that the application data sheet filed with the response was not identical to the application data sheet filed with the original filing. Further, the decision indicated that it was not clear that the copy of the declaration filed with the petition was a true copy of the declaration that was filed 29 March 2002.

On 24 September 2002, applicant filed the current response which is accompanied by, *inter alia*, a legible copy of the postcard receipt, an explanation as to how the initials and date got on the postcard receipt and an explanation as to why the application data sheet provided on 09 July 2002 was not identical to that with the original filing.

DISCUSSION

MPEP section 502 states, in part:

If a receipt of any item (e.g., paper or fee) filed in the USPTO is desired, it may be obtained by enclosing with the paper a self-addressed postcard specifically identifying the item. The USPTO will stamp the receipt date on the postcard and place it in the outgoing mail. A postcard receipt which itemizes and properly identifies the items which are being filed serves as *prima facie* evidence of receipt in the USPTO of all the items listed thereon on the date stamped thereon by the USPTO.

The copy of the postcard receipt filed by applicant indicates that the executed declaration was filed with the initial filing on 29 March 2002. Applicant has indicated that the markings on the postcard receipt were placed on the postcard by attorney who check the filing to make sure all of the documents are included before the application is filed. Further, applicant has indicated that the application data sheet filed on 09 July 2002 was not in fact a true copy but was a draft copy in his file that was not properly marked. However, it is still not clear that the copy of the declaration filed with the petition was a true copy of the declaration that was filed 29 March 2002.

CONCLUSION

The current petition is DISMISSED.

If reconsideration on the merits of this petition is desired, a proper reply must be filed within TWO (2) MONTHS from the mail date of this decision. Any reconsideration request should include a cover letter entitled "Renewed Petition Under 37 CFR 1.181." No additional petition fee is required. Extensions of time may be obtained under 37 CFR 1.136(a).

Any further correspondence with respect to this matter should be addressed to the Mail Stop PCT, Commissioner for Patents, Office of PCT Legal Administration, P.O. Box 1450, Alexandria, Virginia 22313-1450, with the contents of the letter marked to the attention of the Office of PCT Legal Administration.



Debra S. Brittingham
PCT Special Programs Examiner
PCT Legal Office



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PCT Legal Examiner
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FILED WITH FEES UNDER 35 U.S.C. 174

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PATENT

Att'y-Docket: 1860/50907
Inventor(s): INGO WAGNER ET AL
Serial No.: (To Be Assigned)
Filing Date: March 29, 2002

Today's Date: March 29, 2002

The following has been received in the U.S. Patent & Trademark Office on the date stamp on hereon:

A PCT Application Transmittal (in duplicate);
 A copy of the International Application as filed;
 English Translation of International Application, including twelve (12) claims (1-15 pages);
 Three (3) sheets of drawings showing Figs. 1-3;
 A (Att. 1-15) Data Sheet and an executed Declaration and Power of Attorney;
 Substitute Specification including three (3) sheets of drawings (Figs. 1-3) and marked-up copy thereof;
 A Preliminary Amendment;
 An Assignment Recordation Cover Sheet and an executed Assignment;
 Information Disclosure Statement including International Search Report and PTO-1449 Form with (10) references;
 C&M Check No. 250-921 in the amount of \$1,250.00; and
 C&M Check No. 250-1722 in the amount of \$40.00

DUE DATE: April 1, 2002

DDF:aw

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JCD5 Rec'd PCT/PTO 29 MAR 2002

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